

MISC. CRIMINAL APPLICATION NO. 691 OF 1985.

Date of decision: 23.4.1996.

For approval and signature

The Honourable Mr. Justice R. R. Jain

Ms. A.H. Yagnik, advocate for petitioner.

Respondent No.1- served.

Mr. K.P. Raval, A.P.P. for respondent No.2-State.

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: R. R. Jain, J.

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April 23, 1996.

Oral judgment:

Petitioner has been charged for offence under Section 32 (1) of the Bombay Weights & Measures (ENF) Act, 1958 (hereinafter referred to as "the Act" for short). A complaint came to be filed in Metropolitan Magistrate's Court (No.12) and the Court taking cognizance thereof issued process against the petitioner. It is the belief of the petitioner that no such offence has been committed and yet such complaint has been filed and, therefore, approached this court under Section 482 of the Criminal Procedure Code ('the Code' for short) for quashing

proceedings as well as process.

Prima facie, the allegation that the goods supplied was short of weight as written on the container do constitute an offence as alleged. Further, on perusal of papers, it appears that a mixed question of law and facts is involved and hence court will have to appreciate facts before taking any decision. Question of facts cannot be gone into by this court while exercising jurisdiction under Section 482 of the Code. Appreciation of facts presupposes leading of evidence and production of documents in corroboration thereof which can only be done before the trial court. Hence, in my view, application under Section 482 of the Code is not maintainable.

In the result, the application is dismissed. Rule is discharged. Interim relief is hereby vacated. Since the matter is very old, the trial court is directed to dispose of the matter as early as possible.